

GENERAL GROWTH PROPERTIES,	*	BEFORE THE
PETITIONER	*	PLANNING BOARD OF
	*	HOWARD COUNTY, MD
PLANNING BOARD CASE NO. 395	*	
*   *   *   *   *		

**DECISION AND ORDER**

On July 12, 2012, the Planning Board of Howard County, Maryland, in accordance with Section 125.E.4 of the Howard County Zoning Regulations, held a public hearing to consider the petition of General Growth Properties for approval of a Final Development Plan for Downtown Revitalization (FDP-DC-The Mall-1, Downtown Columbia, The Mall Neighborhood) for the removal of 31,500 square feet of existing retail and the addition of 75,000 square feet of retail and restaurant space for a net increase of 43,500 square feet of Gross Leasable Area on 5.67 acres of land zoned New Town (NT) and designated as Downtown Mixed Use Area per the Downtown Columbia Plan. The subject site is located between Mall Ring Road and Little Patuxent Parkway in the Fifth Election District of Howard County, Maryland, identified as Tax Map 36, Parcel 460, Lot 47. As part of this petition for Downtown Revitalization, the Planning Board also considered for approval The Mall Neighborhood Concept Plan, The Mall Neighborhood Specific Design Guidelines and The Mall Neighborhood Specific Implementation Plan as proposed by the Petitioner in accordance with Section 125.E.3 of the Zoning Regulations.

The notice of the public hearing was published and the subject property was posted in accordance with the Planning Board's requirements, as evidenced by certificates of publication and posting, all of which were made a part of the record of the case.

Pursuant to the Planning Board's Rules of Procedure, the reports and official documents pertaining to the Petition were incorporated into the record of the hearing, including the proposed Final Development Plan (FDP-DC-The Mall-1), the proposed Mall Neighborhood Concept Plan, the proposed Mall Neighborhood Design Guidelines, the proposed Mall Neighborhood Implementation Plan, Certificate of Advertising, Certification of Posting of the property, the Howard County Code, the Downtown Columbia Plan (a General Plan Amendment), the Howard County Zoning Regulations, the Downtown-wide Design Guidelines, the Adequate Public Facilities Act, the Howard County Design Manual (Volume 3, Chapter 4), the Howard County Sign Ordinance, the Technical Staff Report of the Department of Planning and Zoning, and the reports of the responding reviewing agencies. A list of exhibits introduced into evidence by the Petitioner at the hearing is attached to this Decision and Order as Attachment 1.

Michael Davis, Esq., represented the Petitioner, the General Growth Properties. No individuals testified in opposition to the petition and one testified in favor of the petition. After careful evaluation of all the evidence accepted into the record, the Planning Board makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. Tanya Krista-Maenhardt, AICP of the Department of Planning and Zoning ("DPZ") summarized DPZ's Technical Staff Report, which found conformance of the proposed Plans and Neighborhood Specific Design Guidelines with the Downtown Columbia Plan and the Downtown-Wide Design Guidelines and recommended approval of the proposed Final Development Plan, FDP-DC-The Mall-1, the proposed Mall Neighborhood Concept Plan, the proposed Mall Neighborhood Design Guidelines, and the proposed Mall Neighborhood Implementation Plan, as submitted, subject to

compliance with the Subdivision Review Committee (SRC) comments. Planning Board had no questions of Staff.

1. The Planning Board finds the Department of Planning and Zoning's evaluations, findings and conclusions to be convincing and persuasive and that the Petitioner met the criteria for approval of the Final Development Plan pursuant to Section 125E.4. of the Zoning Regulations, based on its submissions and modifications pursuant to Section 125E.3. of the Zoning Regulations. The Board adopts DPZ's report as its own in making the findings of fact and conclusions contained in this decision.

2. Mr. Michael Pieranunzi, Director of Land Planning for Century Engineering testified first for the Petitioner. He presented an overview of the history and evolution of the Mall Final Development Plan and the Mall Neighborhood Concept Plan. He testified that the Mall Final Development Plan and Mall Neighborhood Concept Plan both meet the Criteria for Planning Board Approval per Section 125.E.4 of the Zoning Regulations.

3. Ms. Cecily Bedwell, Senior Associate with Design Collective, testified next for the Petitioner. Ms. Bedwell gave an overview of all components of the Mall Neighborhood Design Guidelines and the Mall Implementation Plan. Ms. Bedwell also gave an overview of the proposed modifications to the Mall Neighborhood boundaries, proposed changes to the Street Framework system and clarification of building height. These modifications are summarized in DPZ's Technical Staff Report (pages 6 and 7) as follows:

a. In the Northeast, the Neighborhood boundary has been slightly adjusted to capture The Mall's Northeast parking deck, which was previously shown on the Downtown Plan to be within the Lakefront Neighborhood. The Northeast parking deck is under common ownership with the Mall and the desire is to have all existing parking structures at the Center follow the same Neighborhood Design Guidelines for consistency and uniformity throughout the Center.

b. In the Southwest, the Neighborhood boundary has been slightly adjusted outward to capture Sears' expansion rights area. The desire is to have all existing and future Mall buildings follow the same Neighborhood Design Guidelines for consistency and uniformity throughout the Center.

c. In the Northwest, the Neighborhood boundary has been slightly adjusted outward to capture Nordstrom's expansion rights area. The boundary has shifted to follow the proposed street as it bends near the Warfield Mews. The desire is to have all existing and future Mall buildings follow the same Neighborhood Design Guidelines for consistency and uniformity throughout the Center.

d. Street Type 3 shown in The Mall Neighborhood Design Guidelines include two travel lanes and optional parallel parking on both sides, as opposed to optional parallel parking only on one side, as shown in the Downtown Columbia Plan.

e. The existing roadways between The Mall and the existing parking garages are proposed as Alleys in The Mall Neighborhood Design Guidelines, as opposed to Streets, as shown in the Downtown Columbia Plan. The Alley locations include the roadway in the northeast corner of the neighborhood between Macy's and the parking garage and north of Lord and Taylor; the roadway in the southeast corner of the neighborhood between JC Penny and the parking garage and south of Lord and Taylor; and the roadway between Nordstrom and the parking garage. As the current function of these roadways are not proposed to change and will continue to serve mainly as vehicular access to existing structured parking garages no new buildings, it is appropriate that they are classified as alleys, rather than streets.

f. The Mall Neighborhood Design Guidelines maintain the maximum building heights as outlined on Exhibit 'F' of the Downtown Columbia Plan. However, the minimum building height throughout the district is two stories or 22 feet (reduced from 30 feet). This reduction accommodates proposed additions and allows for consistency with the existing Mall structure.

4. Planning Board members expressed their concerns. First: Bill Santos encouraged the applicant to consider placing secondary amenity space on top of existing parking garages and the area at the southeast corner of JC Penny and Lord and Taylor. Ms. Bedwell stated this use would be reviewed in more depth at the Site Development Plan stage. Second: Mr. Santos expressed concern over modifying the street framework for certain streets, amending their classification from “street” to “alley”, since it is important to maintain these roadways, including planting areas. In response, Ms. Bedwell stated that no structural improvements were proposed, so these streets will function and be maintained as they always have. Third: Mr. Santos asked about stormwater management. Ms. Bedwell responded that ESD (Environmental Site Design) practices would be required and incorporated into the new Mall design. In response to a question from Planning Board member Paul Yelder, regarding the future location of the transit hub, Mr. Pieranunzi answered that with this Final Development Plan, the transit hub will remain in its existing location. Mr. Yelder asked for additional information regarding the future location of the transit center and Mr. Pieranunzi indicated that he was unaware of the location of the future transit center and that for now all that would exist is the current hub serving various buses. Mr. Josh Tzucker, Planning Board member stated that he agreed with Bill Santos and encouraged innovative amenity spaces that links existing amenity spaces in adjacent neighborhoods. Mr. Tzucker also expressed concern over a possible building height of only 22 feet “hamstringing” future developers. Ms. Bedwell stated that a 22 foot building height allowed for greater flexibility in design elevations, allowing for a range of elevations varying between 22 and 30 feet in height. Ms. Jacqueline Easley, Planning Board member encouraged better pedestrian access and improvements on materials and signage related to access. Ms. Bedwell stated that she understood the desire for such improvements and these issues would be reviewed in greater detail at the Site Development Plan stage. Finally at Mike Davis’, Esq. inquiry, Ms. Bedwell testified that the Mall Neighborhood Design Guidelines and the Mall Implementation Plan,

with the proposed modifications, meet the Criteria for Planning Board Approval per Section 125.E.4 of the Zoning Regulations.

5. Mr. James P. Whitcome, Senior Director of Development for General Growth Properties, testified as to his background and credentials. He briefly overviewed the status of CEPPAs #1 through #6 and briefly discussed how the proposed Final Development Plan addressed Planning Board criteria, paragraphs 'C', 'E', 'J', 'M', 'N' and 'O' of Section 125.E.4. of the Howard County Zoning Regulations. Mr. Davis then gave a brief summary of the project and its conformance with the Zoning Regulations.

6. Joan Lancos testified in favor of the Mall Final Development Plan and stated she looks forward to increased "walkability", especially via proposed linkages within the mall itself and was in favor of the proposed modifications to the neighborhood boundary.

7. The Board finds that the Petitioner has established that its proposed Final Development Plan satisfies all the criteria of Section 125E.4.a. through o., and the Board makes the following findings of fact on these criteria based on the evidence in the record, including the evaluations, findings and conclusions of the DPZ as contained in its Technical Staff Report, which the Board adopts as its own, as provided below:

a. The Final Development Plan, the Mall Neighborhood Concept Plan, the Mall Neighborhood Specific Design Guidelines, and the Mall Neighborhood Specific Implementation Plan ("the Neighborhood Documents") conform with the Downtown Columbia Plan, including the Street and Block Plan, the Neighborhoods Plan, the Maximum Building Heights Plan, the Primary Amenity Space Framework Diagram, the Street Framework Diagram, the Bicycle and Pedestrian Plan, and the Open Space Preservation Plan based on the testimony of Ms. Bedwell and Mr. Pieranunzi as summarized in Findings of Fact 2, 3 and 4, Petitioner's exhibits and DPZ's Technical Staff Report,

all of which the Board finds convincing. The Board finds that the proposed changes to the Neighborhood Documents will not be detrimental to the overall design concept and phasing for Downtown Revitalization based on the testimony of Ms. Bedwell as summarized in finding of fact 3, petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing. The Board makes all of these findings in recognition of the fact that pursuant to Section 125E.3.a. of the Zoning Regulations that the Neighborhood Documents are only binding on property included within the boundaries of Final Development Plan FDP-DC-The Mall-1, and only provides a context for evaluation of the initial FDP and guidance for future FDP petitions. The Board also makes its findings of conformance for this criterion of FDP decision-making based on the requirements of Section 125A.2.b.(1)-(6) of the Zoning Regulations.

b. The Mall Neighborhood Design Guidelines, which were modeled after the Downtown-Wide Design Guidelines but with the changes as noted in the DPZ Technical Staff Report, offer sufficient detail in sustainability, urban design, complete streets design, pedestrian and bicycle circulation, open space design, architectural design and signage. The Design Guidelines are extensive (encompassing 142 pages) and contain detailed provisions to help guide the appearance of The Mall Neighborhood over time. New sidewalks along both sides of the street and in identified pedestrian areas are designed to be active and incorporate outdoor seating and dining opportunities and sustainable features, including rain gardens/rainwater planters, street trees, permeable pavers, rainwater tree pits and bioretention facilities. Street sections will incorporate marked shared-bike lanes to promote the safe and efficient use of bicycles as an alternate form of transportation. Street-level retail and restaurant opportunities are designed to engage the pedestrian, and future connections to adjacent primary amenity spaces are designed to provide connectivity to social gathering spaces. The design features contained in the Design Guidelines will assure a compatible relationship among new development and existing residential and retail areas based on the

testimony of Ms. Bedwell as summarized in Findings of Fact 3 and 4, the Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing. The Board makes these findings, after considering the Design Advisory Panel's recommendations and Petitioner's incorporation of those recommendations, as noted in Attachment 'C' to DPZ's Technical Staff Report.

c. This Final Development Plan conforms with the Neighborhood Documents, including the Neighborhood Concept Plan, Neighborhood Design Guidelines, and Neighborhood Implementation Plan submitted with this Final Development Plan, which provide a context for evaluation but are only binding on properties within the boundaries of the Final Development Plan, FDP-DC-The Mall-1. The Final Development Plan conforms with the Revitalization Phasing Plan, and the Downtown Community Enhancements Programs, and Public Amenities (CEPPA) Implementation Chart. CEPPAs (#1-5) have been fulfilled as required prior to the approval of the first Final Development Plan. CEPPA #6 is in progress, and legislation has been prepared and recently approved regarding the agreement of the functions, organizational structure, implementation phasing and funding of the Downtown Partnership, which must be established prior to the issuance of the first building permit per the Downtown Columbia Plan. The Board makes these findings based on the testimony of Mr. Pieranunzi as summarized in Finding of Fact 2, Ms. Bedwell as summarized in findings of fact 3 and 4 and of Mr. Whitcome as summarized in finding of fact 5, Petitioner's Exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.

d. The Final Development Plan, in context with the surrounding planned and existing development, provides a balanced mix of housing, employment and commercial and arts and cultural uses throughout each phase. The Mall, including new sidewalks, hardscape and landscape, street furnishings and lighting, and public art will establish a character that is consistent with the

surrounding neighborhoods and allows for a seamless integration. Within The Mall Neighborhood itself, a range of commercial uses currently include services, restaurants and retail. The Final Development Plan complements and enhances these uses, while providing a diversity of pedestrian oriented activities and functions that support users within the district as well as existing, nearby residents and tenants, based on the testimony of Ms. Bedwell as summarized in Findings of Fact 3 and 4, Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.

e. No housing is proposed with this Final Development Plan, therefore the affordable housing requirement does not apply.

f. The Final Development Plan's proposed bicycle and pedestrian features provides the initial components of a downtown-wide pedestrian and bicycle network. In addition, the Howard Transit routes serving Downtown (Brown, Green, Gold, Orange, Red, Silver and Yellow) and the existing transit center transfer point are conveniently adjacent to the Final Development Plan area, as summarized by Mr. Pieranunzi in finding of fact 2 and of Ms. Bedwell as summarized in Finding of Fact 3, Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.

g. While there are no lakes, streams or rivers, floodplains or steep slopes on the subject property, connections to existing and planned open space will be considered and explored.

h. While no specific primary amenity spaces are required in The Mall Neighborhood per the Downtown Columbia Plan, five percent (5%) of The Mall Neighborhood land area is required to be secondary outdoor amenity space. The calculation is shown on the Neighborhood Concept Plan and Neighborhood Implementation Plan. The secondary amenity space (of at least 12,350 s.f.) will be located in an area between the existing LL Bean Plaza and the future mall entrance and between the

existing mall entrance and the current Nordstrom parking deck. Final location and configuration will be determined at the Site Development Plan submission.

i. The Final Development Plan is in harmony with existing and planned vicinal land uses and will allow for more appropriate connectivity and enhanced harmony based on the testimony of Mr. Pieranunzi as summarized in Findings of Fact #2, petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.

j. The Adequate Public Facilities Ordinance requirements for housing allocations and schools are not applicable to this FDP since no residences are proposed. A traffic study prepared by Wells & Associates has demonstrated that the development proposed by the FDP will be served by adequate transportation facilities in accordance with the Adequate Public Facilities Ordinance. The APFO study was approved by the Development Engineering Division and the Department of Public Works on May 1, 2012.

k. There are no environmental features existing within the Final Development Plan area.

l. There are no historic or culturally significant existing sites, buildings or structures or public art located within the boundaries of the Final Development Plan.

m. The Petitioner will either incorporate art in the community equivalent in value to 1% of the building construction costs or will pay a fee-in-lieu as required in Section 125.A.9.f.2 of the Zoning Regulations as noted on sheet 1 of the Final Development Plan, and this will be further determined at the Site Development Plan stage.

n. The Final Development Plan provides a plan to hold, own, and maintain in perpetuity land intended for common quasi-public amenity use and public art that is not publically owned through a

reciprocal agreement dated December 1, 1970 and recorded as Liber 552, Folio 382 as summarized in Petitioner's exhibits and DPZ's Technical Staff Report, all of which the Board finds convincing.

Property within the FDP area that is intended for common, quasi-public amenity use will be held, owned and maintained subject to this reciprocal easement agreement granting pedestrian and vehicular access and ingress/egress rights between the FDP area and adjacent public thoroughfares, including sidewalks and walkways, as well as use of all common areas for their intended purpose. Each property owner will be required to share in the maintenance expenses of such spaces pursuant to the reciprocal easement agreement. Such maintenance responsibilities may ultimately be assumed by a Downtown Partnership, the County, or other organization.

o. Legislation that has been filed to establish the Downtown Columbia Partnership is anticipated to require annual payments into the Partnership as required by CEPPA #25. The per-square foot payment shall be calculated from April 6, 2010 and shall include an annual adjustment based on the Consumer price Index for All urban Consumers (CPI-U) for the Washington-Baltimore Area published by the Bureau of Labor Statistics of the United States Department of Labor. The first annual payment shall be paid prior to issuance of the first occupancy permit for the building and subsequent payments shall be due on or before July 1, of each year following the year of initial payment.

### **CONCLUSIONS OF LAW**

The Petitioner has satisfied all of the criteria for the consideration of Final Development Plan petitions to be considered by the Planning Board in accordance with Section 125.E.4 of the Howard County Zoning Regulations based on the Board's Findings of Fact provided above and as outlined in the Technical Staff Report of the Department of Planning and Zoning. Therefore, in accordance with the testimony given and evidence in the record and based on the Findings of Facts and Conclusions of Law

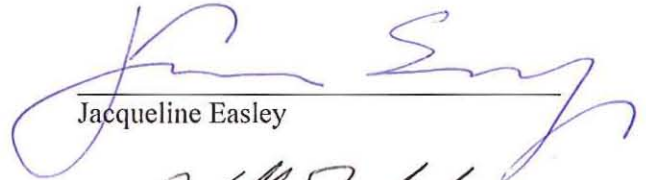
for Planning Board Case No. 395, the petition of General Growth Properties for approval of The Mall Neighborhood Design Guidelines, The Mall Neighborhood Implementation Plan, The Mall Neighborhood Concept Plan, and Final Development Plan FDP-DC-The Mall-1 is this 20<sup>TH</sup> day of August, 2012, **APPROVED** by the Planning Board of Howard County, subject to the following condition:

1. The petitioners must adequately address all remaining technical comments provided by the Subdivision Review Committee in the letter dated June 12, 2012.

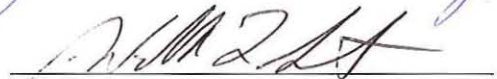
HOWARD COUNTY PLANNING BOARD



David Grabowski – Chairperson



Jacqueline Easley



Bill Santos

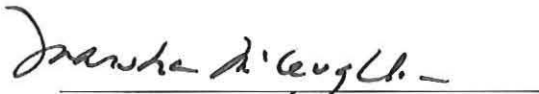


Josh Tzucker



Paul Yelder

ATTEST:



Marsha McLaughlin  
Executive Secretary

REVIEWED FOR LEGAL SUFFICIENCY BY:  
HOWARD COUNTY OFFICE OF LAW  
MARGARET ANN NOLAN, COUNTY SOLICITOR



Paul T. Johnson  
Deputy County Solicitor

**Attachment 1**

**LIST OF PETITIONER'S EXHIBITS**

**PB-395 (FDP-DC-The Mall-1), Downtown Columbia, The Mall Neighborhood**

1. Mailing List for pre-submission community meeting minutes
2. Pre-submission community meeting minutes (January 17, 2012)
3. Letter dated May 30, 2012 from GGP to Dave Grabowski, chair outlining Planning Board approval criteria
4. List of witnesses called by Mike Davis, Esq.
5. Resume for Michael Pieranunzi, RLA-Century Engineering
6. Curriculum Vitae for Cecily Bedwell, LEED AP, BD+C, Design Collective
7. Resume for James P. Whitcome, GGP
8. Powerpoint Illustrations #1-9 prepared by Planning Staff
9. Paper copy of the Mall Neighborhood Final Development Plan
10. Paper copy of the Mall Neighborhood Concept Plan

**LIST OF PROTESTANT'S EXHIBITS**

1. There were no Protestants (and therefore no Exhibits) in opposition of this proposal.